In the Supreme Court of the United States

OCTOBER TERM, 1965

No. 486

ROY E. GUSOW AND DONALD H. ORANSKY,
PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the court of appeals (Pet. App. I) is reported at 347 F.2d 755.

JURISDICTION

The judgment of the court of appeals was entered on June 25, 1965. Mr. Justice White extended the time for filing a petition for a writ of certiorari to

and including August 24, 1965. The petition for a writ of certiorari was filed on August 23, 1965. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether there was sufficient evidence to support the jury's verdict.

STATEMENT

After a trial by jury in the United States District Court for the District of Colorado, petitioners and a co-defendant were convicted on all eight counts of an indictment charging the use of the mails in a scheme to defraud, in violation of 18 U.S.C. 1341 (R. 16-22).[1] On count one, petitioner Gusow was sentenced to two-and-a-half years' imprisonment and petitioner Oransky to one-and-a-half years' imprisonment, both with eligibility for parole to be determined by the parole board. Both petitioners were given concurrent five-year suspended sentences on each of the remaining seven counts, with a three-and-a-half year probation period to begin upon completion of the sentence imposed under count one (R. 27-28, 30-31).[2]

The evidence showed that petitioners and co-defendant Shapiro, doing business as the Overseas Ap-

[1] Reference is to the transcript of record before the court of appeals, filed with this Court.

[2] Co-defendant Shapiro's sentence was identical to that imposed upon petitioner Gusow (R. 28-30).

plication Service (O.A.S.), placed advertisements in newspapers of general circulation in various cities soliciting applications from persons interested in employment overseas (R. 36-39, 43-44, 109-112). The advertisements represented that such jobs offered good pay, "adventure and excellent living conditions," and "little or no taxes" (R. 6; Ex. 46, 46a, 55). The advertisements indicated that O.A.S. would conduct interviews with interested individuals at stated times and places and would prepare and forward to prospective employers the applications of those persons who were qualified for the jobs involved (R. 6; Ex. 46, 46a, 55).

Petitioners conducted a number of these interviews themselves (R. 68, 100, 112-113, 125-126, 158-160, 350-430),[3] and others were conducted by salesmen whom petitioners had instructed (R. 245-266, 288-323). Petitioners told their salesmen not to reject any applicant unless he was "completely unable or drunk or something like that" (R. 292). Petitioners and their salesmen represented to those who appeared for interviews that O.A.S. had "connections" with contractors seeking employees for overseas work. They told most prospective applicants that their qualifications "looked good" and that they should be able to get a job through the O.A.S. method (R. 62-79, 98-109, 112-116, 123-133, 135-142, 156-164, 245-266, 288-323). In addition, they provided each prospective applicant with a two-page document entitled "Gen-

[3] Petitioner Oransky used the name "Owens" in conducting some interviews (R. 125-126, 158-160).

eral Information On Overseas Jobs", which elaborated on the representations concerning pay, taxes and living conditions contained in the newspaper advertisements (R. 63, 99-100, 112-113, 124; Ex. 27). After completing the short job-application form, calling for only the most rudimentary personal information, the applicants were informed for the first time that there was a charge for O.A.S. services (R. 68, 100-101, 113, 125-126). They were then asked to sign contracts which provided that, for a fee of $22.50,[4] O.A.S. would send copies of their job applications to ten different companies involved in overseas projects, the companies to be selected either by the applicant or by O.A.S. (R. 62-82, 101-107, 113-116, 127, 158-160; Ex. 4, 18, 28). Applicants were told that O.A.S. would select companies which, at the time, had projects in the countries they were interested in and needed employees in their particular job categories (R. 71, 75, 79, 125). Subsequently, many of the applicants received through the mails a list of the ten companies to which their applications had been sent by O.A.S. (R. 73, 89, 102, 127, 148, 271, 278, 337).

Contrary to their representations, petitioners and co-defendant Shapiro admitted at the trial that O.A.S. had no "connections" with any company hiring employees for overseas jobs (R. 326, 412-416, 462, 467-470). They also admitted that they never made inquiries of any such company to determine its

[4] The fee was originally $1.75 per company, but was increased to $2.25 per company. Most applicants entered into contracts whereby copies of their application would be sent to ten different companies.

employment needs, the qualifications it requires of prospective employees, or whether it ever made use of applications submitted by O.A.S. (R. 326, 413, 416, 418, 421, 460-463). Petitioners obtained the names of companies doing business overseas from a few generally accessible publications (R. 460), but made no further inquiry of any kind with respect to such companies (R. 326, 460-463, 470). As the court below pointed out, petitioners used "four basic lists of companies" in deciding where to send particular applications; in each case "the applications were sent to the [ten] companies listed on one of the four" (Pet. App. A7).[5] Petitioner Oransky testified that he did not know of a single applicant who ever received an offer of employment through the services of O.A.S. (R. 429).

Representatives of several construction companies to which O.A.S. had forwarded applications testified that petitioners' representations regarding higher pay and lower taxes on overseas jobs were not accurate (R. 181, 197, 207, 215, 232-233), that O.A.S. applicants were not adequately qualified for employment with their companies (R. 182, 187, 189, 227-230, 232-234), and that no O.A.S. applicants were considered

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[5] For example, the applications of a couple seeking secretarial and guard or stock clerk jobs in Hawaii, Scandinavia or Australia were sent to the identical group of ten companies which received the applications of a man seeking employment as a truck driver or construction worker in South America (R. 72-75, 101-103; Ex. 17, 23). The foreign personnel representative of one of these companies testified that his organization was only hiring highly skilled personnel (R. 227).

for employment (R. 177, 193, 200, 204, 218, 222, 230, 236-237).

Petitioners' defense was that O.A.S. was a legitimate operation. In addition to their own testimony to that effect (R. 351-358, 363, 365-371, 418, 454-456, 466-472), they called the publisher of "Jobs Overseas", who testified that he had had a conversation with co-defendant Shapiro regarding the general subject of overseas employment (R. 431-442), and introduced evidence that O.A.S. was financially unsuccessful (R. 430, 464, 471).

ARGUMENT

There is no merit to petitioners' assertions that the trial judge erred in submitting the case to the jury and that the evidence is insufficient to support the jury's verdict. The use of the mails is undisputed. As for the scheme to defraud, the government's proof showed that petitioners made untrue representations —knowing some to be false and evincing total disregard for the truth or falsity of others—in order to persuade applicants to pay for O.A.S. services; that petitioners did not actually conduct the business of O.A.S. as represented to the applicants; and that the services of O.A.S. were worthless, both to the applicants and to the companies involved. This evidence was plainly sufficient to raise factual issues which required submission to the jury. The question of good faith, raised by the defense, was likewise for the jury to determine.

Petitioners seek support in certain comments, which they have taken out of context, made by the district judge in denying their motion for new trial (Pet. 8-9, 11) and imposing sentence (Pet. 9). But the judge was not expressing doubt as to petitioners' guilt in his remarks concerning the motion for new trial; he merely was commenting upon the subtlety and sophistication of their scheme and the jurors' perception in seeing through it (R. 512-514). Among other things, the district judge said: "* * * this is a very subtle, sophisticated scheme. This was apparent to me right along * * * and I do think that the talks of the salesmen were misleading all along the way * * * [R. 512]. There wasn't a chance on earth that any one of these buyers would ever get a job and if they had known the truth, they wouldn't have paid the $22.50, I am sure" (R. 513). He noted that the applicants were individuals who wanted adventure and who "* * * had visions of palm trees and things of that sort and they felt that this $22.50 investment might bring it to them, whereas in truth and in fact there was no possibility" (R. 513). It was then that the judge said:

> "So, I say finally, that it would not have been a surprise to me if the jury had returned verdicts of not guilty here because as I say, this was a very subtle and sophisticated transaction and the jury could well have had a reasonable doubt * * *" (R. 514).

The district judge's conclusion was unequivocal: "* * * I feel that the evidence is legally sufficient * * *" (R. 514).

At the sentencing proceedings, the judge speculated that petitioners might originally have intended to conduct a legitimate business, and he indicated that he would consider that possibility in mitigation. But he went on to say that this did not detract from the fact that "* * * they have been taking the public, and it is a matter of tremendous public impact and interest" (Pet. 9).

CONCLUSION

For the reasons stated, it is respectfully submitted that the petition for a writ of certiorari should be denied.

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SEPTEMBER 1965

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